

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOE GOOCH TRUCKING AND
EXCAVATING, INC.,

Appellant,

v.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 85-157

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a notice and order of civil penalty for \$1000 for allowing an outdoor fire containing prohibited materials, came on for hearing before the Board; Gayle Rothrock (presiding), Lawrence J. Faulk, and Wick Dufford, on October 2, 1985 at Seattle. Respondent agency elected a formal hearing. Laura D. Rawlins, court reporter, recorded the proceedings.

Appellant Joe Gooch Trucking and Excavating, Inc. was represented by its owner, Joe Gooch. Respondent Puget Sound Air Pollution Control

1 Agency was represented by its counsel Keith D. McGoffin.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined. Argument was heard. From the testimony, exhibits, and
4 contentions of the parties the Board makes these

5 FINDINGS OF FACT

6 I

7 Respondent, Puget Sound Air Pollution Control Agency (PSAPCA),
8 pursuant to RCW 43.21B.260, has filed with the Board a certified copy
9 of its Regulation I, of which we take judicial notice.

10 II

11 On July 1, 1985 appellant company did cause or allow a large and
12 vigorous outdoor fire containing demolition debris and natural
13 vegetation in the Fairmount area south of Everett at a construction
14 site.

15 III

16 The fire in question may have started as a land clearing fire, but
17 was topped with plastics, a tarp, pipe, roofing materials, and painted
18 boards. A "clam shovel" mechanical scoop was in use adding this
19 demolition material to the fire pile. These materials caused the fire
20 to emit dense black smoke. It was a warm, clear day as photographs
21 taken of the fire that day depict.

22 IV

23 An inspector from respondent agency spotted the thick black smoke
24 while traveling south on Highway 99 on routine patrol and drove to the
25 site. He took photos and engaged in discussion with the site

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-157

1 superintendent, Mr. VanSickle.

2 During the course of inquiries and responses a Population Density
3 Verification (PDV) issued by PSAPCA for the site was produced. This
4 document verified the population density within .6 of a mile as less
5 than 2,500 persons. In such an area, land clearing burning, as
6 defined, may be conducted under PSAPCA's rules without further
7 approval from that agency. However, the PDV plainly stated the
8 following condition:

9 The outdoor fires must not contain any material
10 other than trees, stumps, shrubbery or other
11 natural vegetation which grew on the property being
12 cleared.

13 V

14 The inspector advised that the PDV did not authorize the burning
15 of building demolition material and that such material is prohibited
16 in open fires. He said the company would likely receive a civil
17 penalty. The site superintendent made beligerant comments, as
18 recorded in the inspector's notes.

19 VI

20 There was no evidence the owner of the site had anything to do
21 with building and maintaining the land clearing and demolition removal
22 fire. Only the scoop operator and the site superintendent were
23 involved in fueling the subject fire.

24 VII

25 It was recounted that the company's site superintendent worked
26 under the influence of drugs and alcohol and had recently caused
27 trouble with several trucking and excavating contract projects for the

1 company. The superintendent's employment has been terminated, but the
2 owner is still spending a good deal of time ascertaining damages and
3 penalties resulting from all the mishandled projects.

4 VIII

5 After reviewing the inspector's account of the fire and his
6 photographs, PSAPCA issued Notice and Order of Civil Penalty No. 6315,
7 citing violations of Section 8.02(3) and 8.02(4) of Regulation I for
8 causing or allowing an outdoor fire with prohibited materials and for
9 demolition.

10 IX

11 On August 5, 1985 the appellant company received the Notice and
12 Order of civil penalty from PSAPCA. On August 14, 1985, the company
13 appealed the matter to the Board asking for an opportunity to explain
14 the circumstances surrounding the fire and to seek relief from the
15 civil penalty.

16 X

17 Over 17 years of operation in PSAPCA's area, appellant company has
18 received no prior civil penalties. Normal company practice is to haul
19 demolition debris away for appropriate disposal, not to burn it on
20 site in connection with land clearing. Subsequent to July 1, 1985,
21 there have been no further events like the instant case.

22 XI

23 Any Conclusion hereinafter determined to be a Finding of Fact is
24 hereby adopted as such.

25 From these Findings of Fact the Board comes to these

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-157

1 CONCLUSIONS OF LAW

2 I

3 The Board has jurisdiction over these persons and these matters.
4 Chapters 43.21B and 70.94 RCW.

5 II

6 The Legislature of the state of Washington has enacted a strict
7 policy on outdoor burning.

8 It is the policy of the state to achieve and
9 maintain high levels of air quality and to this end
10 to minimize to the greatest extent reasonably
11 possible the burning of outdoor fires. Consistent
12 with this policy, the legislature declares that
13 such fires should be allowed only on a limited
14 basis and under close control. RCW 70.94.740.

15 Respondent PSAPCA has adopted its Regulation I, Section 8.02 which
16 provides in relevant part:

17 It shall be unlawful for any person to cause or
18 allow any outdoor fire:

19 (3) containing garbage, dead animals, asphalt,
20 petroleum products, paints, rubber products,
21 plastics or any substance which normally emits
22 dense smoke or obnoxious odors.

23 Appellant company's failure to maintain a regular land clearing
24 fire and its fueling of the subject fire with prohibited materials
25 violated Section 8.02(3) of Regulation I.

26 III

27 Regulation I, Section 8.02(4) further disallows open outdoor fires
for the purpose of demolition, salvage or reclamation of materials.
We conclude appellant company employees were accomplishing demolition
and removal of structural debris by fueling the fire with certain of

1 the prohibited materials which were observed in the fire.

2 IV

3 Appellant company has a respectable record of compliance with
4 PSAPCA regulations over the past seventeen years. The beligerant and
5 peculiar behavior of the site superintendent and the scoop operator
6 are an embarrasment and a financial nightmare for the owner of the
7 company, A penalty should be fashioned which recognizes the prior
8 good record and takes into account the efforts to prevent a
9 recurrence, but which also promotes long-term compliance with air
10 pollution regulations in light of the flagrant nature of this
11 violation. Under all the circumstances the Order set forth below is
12 appropriate.

13 V

14 Any Finding of Fact which is deemed a Conclusion of Law is hereby
15 adopted as such.

16 From these Conclusions of Law the Board enters this
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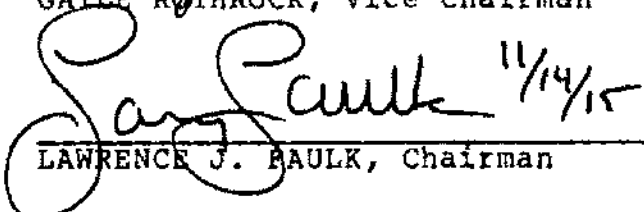
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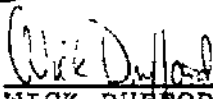
Notice and Order of Civil Penalty No. 6315 is affirmed; provided however that \$500 is suspended on condition that appellant company not violate respondent's regulations for a period of one year from the date of issuance of this order.

DONE this 18th day of November, 1985.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Vice Chairman

 11/14/85
LAWRENCE J. BAULK, Chairman


WICK DUFFORD, Lawyer Member

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